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# PETITION FOR WRIT OF MANDAMUS.

## SUPREME COURT OF THE UNITED STATES.

No. 9.—ORIGINAL ACTION.

EX PARTE IN THE MATTER OF JOHN F. PARGOUD, PETITIONER.

PETITION FOR WRIT OF MANDAMUS TO THE COURT OF CLAIMS.

FILED OCTOBER 8, 1869.

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### PETITION FOR WRIT OF MANDAMUS TO THE COURT OF CLAIMS.

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1 In the Supreme Court of the United States.—December term, 1869.

EX PARTE JOHN FRANCIS PARGOUD, PRAYING FOR A WRIT OF MANDAMUS TO THE HONORABLE THE JUDGES OF THE COURT OF CLAIMS.

To the honorable the judges of the Supreme Court of the United States:

The petition of John F. Pargoud, a citizen of the State of Louisiana, respectfully represents—

That heretofore, to wit, on the twelfth day of May, 1868, he filed his petition in the United States Court of Claims against the United States for the proceeds, amounting to twenty thousand dollars and upwards, lying in the treasury of the United States, and coming from [from] the
2 sale of eighty five bales of cotton, the property of your petitioner, sold by the United States, and which in the summer of the year 1865 had been illegally taken possession of by one W. W. Messer, a treasury agent, on the false and illegal pretext that the same was abandonned property, and as such legally liable to seizure by the treasury agents of the United States, and which cotton had, subsequently to the said seizure, been illegally sold by the said treasury agents, and the proceeds, amounting to twenty thousand dollars and upwards, as aforesaid, been deposited in the treasury of the United States.

And your petitioner further shows that the law officer of the United States in the Court of Claims aforesaid, on or about the twenty-fifth day of August, 1868, moved the court to dismiss the said petition on various grounds, which were subsequently sustained by the court, and on or about the twelfth day of April, 1869, a final judgment was entered by the court dismissing the petition.

Now, your petitioner further shows that by law he was entitled to appeal from said final judgment to this honorable court, and it was the duty of the said Court of Claims to allow his appeal; that accordingly,
3 [ingly] within the time prescribed by law for an appeal, he applied by petition to the said Court of Claims, asking to be allowed to appeal from said judgment to this court; which the said Court of Claims refused to allow him to do, and denied him his right of appeal to this court; whence your petitioner is left deprived of his legal rights of appeal, and has now no other remedy in law than your writ of mandamus to compel the Court of Claims to perform a duty imposed upon them by law, viz., that of allowing petitioner his appeal from their said judgment, and performing all other acts necessary to the complete enjoyment and exercise of his said right.

Wherefore petitioner prays, the premises and the annexed affidavit being considered, your honors may be pleased to order a rule nisi to be issued, directed to the honorable the judges of the Court of Claims, and commanding them, on a day to be fixed by your honors, to show cause why a writ of mandamus should not issue to them, directing them peremptorily to allow petitioner his appeal from the judgment by them rendered in the case of John F. Pargoud vs. the United States; that, after due proceedings had, your honors may order [order] a peremptory
4 mandamus to be issued commanding the said Court of Claims to allow petitioner's appeal as prayed for, and to perform all the other acts required of them, by law, in the premises, and he prays for all such other aid, remedy, relief, and process as the nature of his case may require and law permit.

THOMAS J. DURANT,
*Of Counsel.*

Thomas J. Durant, being duly sworn, says that he is the attorney of John F. Pargoud, who is now in the State of Louisiana, and that all the facts and allegations of the above petition are true.

THOMAS J. DURANT.

Sworn and subscribed before me this 4th day of October, 1869.

DAVID R. SMITH, *J. P.* [SEAL.]

5 (Indorsed:) U. S. Supreme Court. John F. Pargoud praying for a mandamus on the judges of the Court of Claims. Petition & prayer for a rule nisi. Thomas J. Durant, att'y.

(Indorsed:) Supreme Court U. S. 1868, December term. Original, No. 9. Ex parte in the matter of John F. Pargoud, petitioner. Petition for a writ of mandamus to the Court of Claims.
Filed 8 October, 1869.

6 Supreme Court of the United States.—December term, 1869.

*Motion and petition for mandamus to the C't of Claims.*

NO. 8, ORIGINAL.—EX PARTE J. F. PARGOUD, PETITIONER.

*Order of court.*

On the motion of Mr. Durant, of counsel for the petitioner, it is now here ordered by the court that a rule issue in this cause to the judges of the Court of Claims, requiring them to show cause on the first Friday in February next why a writ of mandamus should not issue, directing them to allow an appeal in the case of J. F. Pargoud vs. United States, agreeably to the prayer of the petitioner.
10th December, 1869.

7 Supreme Court of the United States.—December term, 1869.

NO. 9, ORIGINAL.—IN THE MATTER OF JOHN FRANCIS PARGOUD, PRAYING FOR A WRIT OF MANDAMUS, &c.

To the Supreme Court of the United States:

In response to an order to show cause, granted in this matter on the 10th day of December last, the judges of the Court of Claims of the United States respectfully show—

That on the 12th day of May, 1868, the said John Francis Pargoud filed his petition in the said Court of Claims under the third section of the act of Congress entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrec-
8 tionary districts within the United States," approved March 12th, 1863, a copy of which petition is hereto annexed.

That the said defendants, by their solicitor, moved to dismiss the said petition for want of jurisdiction in said Court of Claims; and that thereupon, on the 12th day of April, 1869, the said court by order dismissed the said petition, on the ground that the said petition did not contain the necessary averments to give the said court jurisdiction of the subject-matter thereof.

That on the 26th day of April, 1869, the petitioner, by his counsel, presented his application to the said court for the allowance of an ap-

peal from the said order or judgment of the said Court of Claims dismissing the said petition, which application was, on the 10th day of May, 1869, denied by the said court, on the ground that no right of
9 appeal was given by law to the said claimant in such case.

All which is respectfully submitted.

January 31, 1870.

JOS. CASEY,
*Ch. J. Court of Claims.*
EDW'D G. LORING,
E. PECK,
CHARLES C. NOTT,
SAM. MILLIGAN, *Judges, &c.*

10 JOHN FRANK PARGOUD
*vs.*
THE UNITED STATES.

To the honorable judges of the Court of Claims of the United States:

The petition of John F. Pargoud, a citizen of the United States, residing in the parish of Ouachita, Louisiana, respectfully represents, claiming against the United States the proceeds of eighty-five bales of cotton, that he was guilty of participating in the rebellion against the United States, but that he has been duly and legally pardoned for such participation by the President of the United States, and that he has received a pardon under the great seal dated on the 11th day of January, 1866, which has been duly accepted by your petitioner, and his acceptance, duly notified to the Secretary of State, is now on file in the office of that department; and he has complied with all the legal formalities in such case made and provided, and under the proclamations of amnesty and pardon, issued by the President of the United States, your petitioner now stands, and is entitled to be considered in law, as if he never had in point of fact participated in the late rebellion against the United States, and consequently he now avers that in legal intendment, and under the allegations already made, he has at all times borne true allegiance to the government of the United States, and that he has not in any way aided, abetted, or given encouragement to the rebellion against the United States.

And your petitioner further shows that for many years past he was the owner of a plantation in the parish of Ouachita, Louisiana, where he produced large crops of cotton; and that in the summer of the year 1865, and after the surrender of all the rebel armies and the suppression of the armed rebellion, there was on his said plantation a large quantity of cotton, eighty-five bales of which were taken possession of by W. M. Meservy, agent of the treasury of the United States in the said parish of Ouachita, Louisiana, falsely pretending that the said plantation was abandoned by the owner, your petitioner, and falsely pretending that your petitioner was absent from his plantation voluntarily and engaged, either in arms or otherwise, in aiding and encouraging the rebellion; but your petitioner alleges that, on the contrary, the truth was that his plantation never had been abandoned by him, but during his absence was left in charge of an agent, viz., John M. Harris, who lived upon and cultivated the said plantation; and that your petitioner was absent on account of ill health, and in order to avoid being forced into the rebel army as a conscript, and was not engaged in aiding the rebellion, in arms or otherwise, or encouraging it. Your petitioner further shows that the said Meservy, United States treasury agent for the parish of

Ouachita, shipped the said eighty-five bales of cotton to B. F. Flanders, supervising special agent of the United States Treasury Department at New Orleans, who shipped the same to New York, where it was sold by the treasury agent for a sum which your petitioner cannot state, being ignorant thereof, but which he believes was twenty thousand dollars and upwards, which ought in law to be refunded to him, and for which he has a legal claim against the U. S. government.

Wherefore petitioner prays, the premises being considered, that this petition may be filed, that it be duly notified to the solicitor of the United States in this honorable court, who may be required within the legal delay to demur to or traverse this petition, and that, after due proceedings shall have been had, your honors may render judgment in favor of petitioner and against the United States for the proceeds of said cotton, to wit, the sum of twenty thousand dollars, with interest at the rate of six per cent. per annum from the 15th day of August, 1865, and he prays for all such other aid, remedy, relief, and process as the nature of his case may require and law permit.

THOMAS J. DURANT,
*Attorney for Petitioner.*

John F. Pargoud, being duly sworn, says that no assignment or transfer of the claim set forth in the above petition, or any part thereof, or any interest therein, has been made; that affiant is justly entitled to the amount therein claimed from the United States after allowing all just offsets and credits; and that he believes the facts as stated in said petition are true.

J. FRANK PARGOUD.

Sworn to and subscribed before me this 1st day of May, 1868.
FRANK MOREY,
*U. S. Commissioner.*

(Indorsed:) Supreme Court U. S. 1869, Dec. term. Original action, No. 9. Ex parte in the matter of John F. Pargoud, petitioner. Return to rule.
Filed 4th February, 1870.

# In the Supreme Court of the United States.

DECEMBER TERM, 1869.

*Ex parte* JOHN FRANCIS PARGOUD, *Petitioner.*

On motion for *mandamus* to the judges of the Court of Claims to allow appeal, &c.

Opinions delivered in the court below, on refusing allowances of appeal.

ROB: S. HALE,
*Special Counsel for U. S.*

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LORING, J., delivered the opinion of the court:

John Frank Pargoud was a claimant here under the act of 12th March, 1863, for the net proceeds of eighty-five bales of cotton, alleged to have been taken from his possession, in the summer of 1865, by the United States. His petition stated that he had participated in the guilt of the rebellion, but that in January, 1866, he had been pardoned by the President, and had complied with the formalities required by the proclamation of amnesty of May 25, 1865.

A motion to dismiss the petition was filed, and, on the hearing, it was ordered that the petition be dismissed. A motion for an appeal was then made and argued, to which the special counsel for the United States objected, that it was without right; and the question is, whether there is an appeal to the Supreme Court from judgments of this court in cases arising under the act of 12th March, 1863.

The fifth section of the act of 12th March, 1863, submits the cases arising under it to the Court of Claims, to be decided "*on proof to the satisfaction of said court.*" This peculiar phrase is familiar to our legislation, and from early times its precise signification has been fixed by the usage of the departments and by repeated decisions of the Supreme Court.

And it has uniformly been held to describe an exclusive and final jurisdiction from which there was no appeal.

On the 28th of August, 1819, Attorney General Wirt, in an official opinion rendered to the Secretary of the Treasury, thus states the question submitted to him: "Whether the pre-emption claims can be ascertained and decided upon by any other agency than that of the registers and receivers of the land districts in which they are situate?" and the Attorney General answers thus: "I think not. The power is expressly given to them, without any power of revision elsewhere. The language of the law is, that 'in every case where it shall appear *to the satisfaction of the register and receiver of public moneys of the land office* that any person who has delivered his claim of notice is entitled, according to the provisions of this act, to a preference, such person so entitled, shall have a right to enter the same, on his producing a receipt from the receiver,' &c.," (1 vol. Op., 291.) And the Attorney General italicizes the words, "to the satisfaction of the register and receiver," &c., as indicating the grounds of his conclusion.

The act of 29th May, 1830, empowered the Commissioner of the General Land Office to prescribe rules for the register and receiver. And on a like question, arising under that act, Attorney General Butler, in an official opinion rendered to the Secretary of the Treasury, April 21, 1836, (3 vol. Op , 93,) said as follows: "In an opinion bearing date the 28th of August, 1819, the Attorney General decided that, under the pre-emption law of the 5th of February, 1813, the power of ascertaining and deciding on the facts which entitle a party to the right of pre-emption was exclusively vested in the register and receiver of the land district in which the lands were situated, without any power of revision elsewhere. The language of the law on which this decision was made is very nearly the same with that of the act of the 29th of May, 1830, on which your questions arise. The proof of settlement or improvement is in each case to be made to the satisfaction of the register and receiver; the only material difference is, that by the act of the 29th of May, 1830, such proof is to be made 'agreeably to the rules to be prescribed by the Commissioner of the General Land Office for that purpose.' This, however, in my judgment, does not vary the matter. The Commissioner of the General Land Office is to prescribe in advance such general rules

in regard to the mode and nature of the proof to be made as he shall think suitable; and those rules are to be observed and conformed to by the register and receiver. But the proof adduced in conformity to such rules is in each case to be received, considered, and decided on, by the register and receiver. In weighing the evidence and in deciding on its efficiency, these officers act in a judicial capacity. If it proves to their satisfaction that the settlement and improvement required by law have been made, they must allow the entry; if it fails to satisfy them of those facts, they must disallow it. The law has not authorized any other officer to reverse or revise their decision; nor can they be compelled to decide according to the dictates of any judgment but their own."

And this view of the law was affirmed by the Supreme Court in the case of Little *vs.* the State of Arkansas, (9 How., 314, 1849.) where the court say: "The register and receiver were constituted by the act a tribunal to determine the rights of those who claimed pre-emption under it. From their decision no appeal was given. If, therefore, they acted within their powers, as sanctioned by the Commissioner, and within the law, and the decision cannot be impeached on the ground of fraud and unfairness, it must be considered final." (See, also, Wilcox *vs.* Jackson, 13 P., 498.)

So the law was held that receivers and registers, under the words "on proof to their satisfaction," had an exclusive jurisdiction until, by statute July 4, 1836, § 1, their action was subjected to the supervision of the Commissioner. In Barnard's Heirs *vs.* Ashley's Heirs, 18 How., 43, 1855, the Supreme Court said: "In cases arising under the pre-emption laws of 29th May, 1820, and 19th June, 1834, the power of ascertaining and deciding on the facts which entitled a party to the right of pre-emption was vested in the register and receiver of the land district in which the land was situated, from whose decision there was no direct appeal to a higher authority." And the court then refer to the act of 1836, and say that it "modifies the powers of registers and receivers to the extent of the Commissioner's action."

The registers and receivers of the Land Office were officers of a department, and their official acts were in general subject, of course, to the revision and control of the head of the department. Yet it was held that they were removed from that revision and control as to matters which were to

be found "*on proof to their satisfaction*," and made a tribunal of exclusive and final jurisdiction, from which there was no appeal.

So the words in question are used where, from the nature of the tribunal, there can be no appeal. As in the act March 3, 1817, (3 Stat. L., 399,) by which an insolvent debtor of the United States may be discharged from the debt by the President "*upon proof made to his satisfaction.*" And again, in the act June 6, 1798, (1 Stat. L., 561,) whereby an insolvent debtor may be released from imprisonment by the Secretary of the Treasury "*on proof made to his satisfaction*" that the debtor has made no fraudulent conveyance, and is unable to pay the debt.

So the like words, when applied to the district courts, have the same effect. Thus, under the naturalization acts, those courts were to be "*satisfied*" as to the alien's residence; and his attachment to the principles of the Constitution, &c., are to be made to "appear to their satisfaction." And in Spratt *vs.* Spratt, (4 Peters, 393,) the judgment of the district courts on the matters specified was held to be final.

So, again, the *Act* 15 *May*, 1820, (3 Stat. L., 592,) "providing for the better organization of the Treasury Department," authorized the agent of the Treasury to issue a warrant of distress against a receiver of the public money, in default in accounting for, or paying over, money he had received. And its 4th section provided that any person aggrieved by such warrant might apply to the district court for an injunction to stay proceedings on the warrant; and it authorized the judge to add damages to the amount of the warrant, if "on dissolving the injunction it shall appear *to the satisfaction of said judge* that the application for the injunction was for delay merely."

Then the act provided for an appeal by the party aggrieved by the decision of the judge on these specified points, "*either in refusing to issue the injunction, or, if granted, on its dissolution;*" but it provided no appeal from the assessment of damages to be added to the amount of the warrant for the delay which was to be made to appear "to the satisfaction" of the district judge. And an express specification in a statute of the powers of appeal excludes all others; or, as the rule is expressed by Justice Curtis, "The affirmative description of the appellate power of the Supreme Court contained in the judiciary act, implies a negative on the

exercise of such appellate power as is not comprehended within it." Curtis's Digest, 273, citing *Durosseau* vs. *The United States*, (6 Cr , 307,) so that the statute of 15th May, 1820, withholds an appeal from the matter to be shown "*to the satisfaction*" of the district judge, although providing for it on other matters.

It is obvious that as to receivers and registers of the Land Office, the President, and the Secretary of the Treasury, there was no general statute giving in express terms an appeal from their decisions; but as to the district court there was, for the act of 1863 (2 Stat. L., 244) provided for appeals to the circuit courts from final judgments and decrees of the district courts, as the act of 3d March, 1863, provided for appeals to the Supreme Court from the final judgments and decrees of this court.

The 5th section of the act of 12th March, 1863, by referring cases under it to this court, submitted them to the usual modes of proceeding here and to the powers with which this court is invested. But we think, on the authorities cited, that in the further provision that the cases should be decided, "*on proof to the satisfaction of said court*," it used that particular phrase, as from early times it has been uniformly used in Congressional enactments, to create a final and exclusive jurisdiction from which there was no appeal. And if the phrase used has that significance, then there is no room for argument, or inference, or question of jurisdiction or powers, for Congress has, *in express terms*, provided that the decisions here should be final.

And such is the effect of the phrase when its words are taken in their ordinary meaning; for, as was said in the opinion read by the Chief Justice in the case of *Celestine Eslava*, no other tribunal could judge what proof was sufficient to satisfy the minds and consciences of this. And we now affirm the decision made in the case of *Celestine Eslava*, and we decide as a conclusion of law—

That claimants, under the act of 12th March, 1863, have no right of appeal from the judgments of this court.

This case involves the effect of pardon and amnesty as well as the right of appeal under the act; and we are glad to know that our decision may be revised in the Supreme Court, and its error, if found, corrected there.

The motion for an appeal is overruled.

NOTT, J., dissenting:

This is the first time that the question of a party's right to appeal to the Supreme Court from a decree in a case under the "*abandoned or captured property act*" has been argued before this court, though the question was once discussed before two of the judges sitting during the vacation, The assumption seems to have prevailed that because these decrees are for the restitution of the proceeds of property whereof the claimants are the equitable owners, that, therefore, they are not judgments; and this assumption had hardly been disturbed until Congress chanced to call the decisions of this court by their right name in a provision designed to secure to the government the right of appeal in all possible cases. *Act 25th June*, 1868, (15 Stat. L., c. 71.) I do not ascribe much importance to this use of a term by Congress, nor think the character of the decisions would be changed by alluding to them as judgments, or decrees, or orders, or awards, or findings. It is the substance and not the name that must give to them their legal character.

What is the nature of these abandoned or captured property decrees? There is a controversy; it is presented on formal pleadings; it is determined by competent evidence taken under and tested by the well-settled rules of the law of evidence; the decree is rendered by a judicial tribunal; and it is final and conclusive upon the parties. If these ingredients do not constitute a "judgment," it is pretty difficult to define what a judgment is.

Assuming that the decree in this case is a judgment, I think the appeal moved for by the claimant should be allowed, for these reasons:

1. The act to establish a Court of Claims (*Act 24th February*, 1865, 10 Stat. L., p. 612) invests this court with jurisdiction "*to hear and determine all claims founded upon any*" "*contract, express or implied.*" If the act stopped there, I should say the "*abandoned or captured property act*" conferred a new jurisdiction; for actions under it are not *ex contractu*, but in the nature of suits in equity to enforce a trust. But the statute does go further: it provides that this court shall also "hear and determine all claims *founded upon any law of Congress.*" The act does not mean any "law of Congress" theretofore enacted, any more than it means any "contract express or implied,"

theretofore made; for both stand in one clause of one sentence, and are to be governed and construed in one way.

This court, then, having jurisdiction of "*all claims founded upon any law of Congress*," Congress conferred by law upon certain parties these abandoned and captured property claims. The object of the statute was not to enlarge the jurisdiction of this court, but to provide for the care and custody of abandoned and captured property, and the proceeds thereof. This court is named but once in the act, then only incidentally, and is not the subject of a single sentence. The provision supposed to have created a new jurisdiction is only an insignificant part of a single section; and the subject of the section, as of the sentence, is the owner of the property, the claimant, the person on whom the claim and right of action are conferred. There is no new power vested in the court, no process prescribed, no remedy indicated, no limitations imposed. The statute speaks not to the court but to the claimant, and simply says that he may come into the only tribunal having jurisdiction of actions against the United States, and bring his action there to enforce the new claim given by and founded upon this law of Congress.

The process, the practice, the remedy, all jurisdictional conditions, this statute leaves to previous legislation. If the Court of Claims had not been named in it once, but the statute instead had said "any person claiming to have been the owner of any such abandoned or captured property may bring his action for the net proceeds in any court having jurisdiction of claims against the United States," it would have said no less than it says now; and these claimants would have proceeded in just the same way that they now do, and would have had just the same relief.

If the jurisdiction of this court rests alone on the "*abandoned or captured property act*," how is the suit to be commenced? By what authority can the court issue process? What is the remedy? By what requirement does the Assistant Attorney General appear and defend? All that the statute says is, that the owner shall "*prefer his claim*" and "*receive the residue*," "*on proof to the satisfaction of said court.*" If these few words create a new, distinct, and independent jurisdiction, not grafted upon nor limited by the statute which confers and restrains the general jurisdiction of the court, then the proceedings under them should have

been a mere *ex parte* investigation to establish a *prima facie* right of recovery in each case, standing in the place of the like investigation given to other claims by the accounting officers of the Treasury. The statute alone neither authorizes nor requires more. To "prefer a claim," does not mean to bring an action; to "receive the residue," does not mean to recover a judgment; "proof to the satisfaction of said court" by the claimant, does not import litigation or counter testimony on the part of the defendants. And, therefore, I think that Congress could never have committed to this court a jurisdiction so important, by the few and careless words of this statute; but that, on the contrary, the power and jurisdiction of this court were previously conferred by the acts 24th February, 1855, and 3d March, 1863, and by those statutes properly prescribed, limited, and defined.

But further than this: The Court of Claims is a court created by statute, and it has repeatedly been held that its jurisdiction must be expressly given. The first act conferring power upon the court uses clear and unmistakable language: "*The said court shall hear and determine* all claims founded upon any law of Congress," &c. (*Act 24th February*, 1855, 10 Stat. L., p. 612.) The second is like unto it: "*The said court, in addition to the jurisdiction now conferred by law, shall also have jurisdiction of all set-offs*," &c., (*Act 3d March*, 1863, 12 Stat. L., p. 765. § 3.) The third is equally plain and decisive: "*The Court of Claims shall have jurisdiction* to hear and determine the claim of any paymaster," &c., (*Act 9th May*, 1866, 14 Stat. L.,. p. 44.) But the "*abandoned or captured property act*" contains not one word of power, of jurisdiction, nor relating to the judicial remedy.

Since this discussion began, the question has been narrowed down to the effect of the words in the act: "*on proof to the satisfaction of said court.*" It is conceded that the power, the jurisdiction, and the remedy, must be derived from the acts creating and reconstituting the court: but it is claimed that these words have a technical meaning exclusive of a right of appeal.

The reasoning, I think, presents this dilemma: 1st, the words must, by implication, annul the express words of the previous statute: "*that either party may appeal to the Supreme Court of the United States from any final judgment*

*or decree which may hereafter be rendered in any case;*" or, 2d, they must strip the proceedings of their judicial character, and reduce them down to the ministerial investigation of an officer sitting to make awards in his discretion on informal proofs. In other words, it would invest us with a general judicial power to hear the case, and an exclusive discretionary power to determine it. I do not think that this can be so. To me it seems clear, that we must accept all of the powers and limitations of the previous statutes or none. If the decision is a final judgment or decree attained under the previous act of 3d March, 1863, then "*either party may appeal to the Supreme Court,*" and express words or necessary implication alone can take away the right.

The cases which have appeared from time to time in the Supreme Court, wherein Congress have invested some officer with the *quasi* judicial discretion of making an award in some contested matter, "upon proofs to his satisfaction," or other equivalent words, do not invest this phrase with any peculiar significance, but rest upon the reason that when a special jurisdiction has been provided by statute, the right of invoking the supervision of the courts of law is not implied. In the words of the Supreme Court in one of these cases, "if a new jurisdiction be conferred, and a special mode be provided by which it shall be exercised, it is clear that the remedy cannot be extended beyond the provisions of the act." United States *vs.* Nourse, (6 Peters, R., pp. 470, 493.) The difference between those cases and these is precisely this—that there, the statutes provided no right of appeal, but here, they do.

As some doubt has been felt as to the meaning of the term "claim" in this "*abandoned and captured property act,*" I observe that claims against the United States consist of two classes: 1st, those coupled with a right of action, and upon which a party may sue in this court; 2d, those not coupled with a right of action, and for which the party has no remedy save what the Supreme Court has termed "the right to importune Congress" (Gordon's case, *post.*)

There are claims recognized by the law which are not causes of action, as a "claim against the government" "growing out of or dependent on any treaty stipulation," (*Act* 3d *March*, 1863;) or a "claim against the United States growing out of the destruction, or appropriation of, or damage to property, by the army or navy," during the

late rebellion, (*Act* 4th *July*, 1864;) but there are no causes of action against the government which are not included in the term "claims" by these various statutes. In these cotton cases the "claim" was created and given by the general provision of the act; and the particular provision naming the tribunal where it might be prosecuted, coupled it with a right of action; and thus the claim is doubly founded upon this "law of Congress."

2. As to the first section of the recent act to provide for appeals from the Court of Claims, it does not affect the question. The section is general, and does not refer to these decrees by name. If they were not "final judgments of the said Court of Claims." the statute does not refer to them even by implication. If they were judgments, the act reconstituting this court already provided for them. The legislative purpose of the section was to secure to the United States a general right of appeal, not dependent on the special statutes, and private acts, and joint resolutions, that from time to time might be passed.

3. Apart from this question of jurisdiction, I think the appeal should be allowed, under the decision of the Supreme Court in the case of Theodore Adams *vs.* The United States, (6 Wall. R., p. 101.)

It is there laid down that this court has no judicial discretion to grant or withhold an appeal. From the nature of things, an inferior court cannot be invested with a judicial discretion as to whether its acts may or may not be reviewed by the appellate court, unless specially intrusted with that discretion by law. Certainly the appellate court cannot commit to the inferior that discretion.

When the rule of the Supreme Court regulating appeals from this court speaks of "*an order of allowance of appeal by the Court of Claims*," it does not mean an allowance of the *right of appeal*, but an allowance of the *application* by the party. It is an allowance of the *fact*, not the right. The allowance is not made as between the appellant and the appellate court, but as between this court and its own records. It settles nothing but that the party has appealed, and that the decree, judgment, or order, from which he appeals, exists The "order of allowance" is, in one sense an admission that a judgment has been rendered; in another sense, a certificate that an appeal has been taken; in a third sense, an authority to the clerk of this court to make up

the record and transmit it to the Supreme Court. Whenever, after judgment, it is asken for, it should be granted; the Supreme Court is able to guard its own jurisdiction.

# In the Supreme Court of the United States.

Ex parte JOHN F. PARGOUD,
Praying for a Writ of Mandamus
to the Court of Claims.

BRIEF OF COUNSEL OF PETITIONER.

The petitioner having brought suit in the Court of Claims to recover the amount of the proceeds of certain cotton, being twenty thousand dollars and upwards, was subjected to an adverse judgment, from which he sought to appeal; his right to do so was contested by the counsel of the United States and refused by the Court. He applies to this Court for an order directing the Court of Claims to grant the appeal.

1. Petitioner's action was brought under the captured and abandoned property act, 12th March, 1863. (12 Statutes at Large, p. 820.)

A contemporaneous act of Congress, entitled "An act to amend an act to establish a court for the investigation of claims against the United States," (see 12 Statutes at Large, p. 765,) says, section 5: "That either party may appeal to the Supreme Court of the United States from any final judgment which hereafter may be rendered in any case by said Court, wherein the amount exceeds three thousand dollars, under such regulations as the said Supreme Court may direct," &c.

The plaintiff, then, in suits in the Court of Claims, is without a right of appeal in cases under $3,000; but for less amounts than that the United States may appeal in three classes of cases:

1. When the judgment affects a class of cases.

2. When it furnishes a precedent for the future action of any executive department in the settlement of such cases.

3. When the judgment involves a constitutional question.

The United States could appeal in no other kind of case under three thousand dollars; the petitioner could appeal *in no case at all* under that amount.

Reading these two acts together, it appears that every petitioner, claiming the proceeds of the sale of his property, has the right to appeal if the value exceeds three thousand dollars. Now, has this right, thus conferred by law, been subsequently taken away?

This Court, on one occasion, decided that by reason of the operation of the 14th section of the act of 3d March, 1863, (12 Statutes at Large, p. 768,) the appellate jurisdiction conferred by the 5th section of the same act could not be constitutionally exercised.

See Gordon *vs.* United States, 2 Wallace, p. 561.

In consequence of this decision Congress repealed the said 14th section of the act of 1863 by the first section of the act of 17th March, 1866, (see 14 Statutes at Large, p. 9,) giving to both parties, in addition, the right of appeal to the Supreme Court in all cases of the character described in said 5th section of the act of 1863, and which had been decided up to the date of the passage of the act of 17th March, 1866, such superadded right, to be exercised within ninety days from the passage of the act.

This legislation affirms the right of appeal to parties claiming under the captured and abandoned property act, 12th March, 1863.

The act of 9th May, 1866, (14 Statutes at Large, p. 44,) in regard to claim of paymasters, &c., asking certain relief, again affirms the right of appeal to both parties.

The act of 25th June, 1868, (see Acts, p. 75,) provides "that an appeal to the Supreme Court of the United States shall be allowed on behalf of the United States from all the final judgments of the said Court of Claims adverse to

the United States"—"under the limitation now provided by law for other cases of appeal from said Court."

Here is a provision of law enlarging the right of appeal in behalf of the United States, but not, in any degree, restricting that already granted to petitioners of appealing in all cases exceeding $3,000 in value.

The foregoing embraces all the legislation on the question involved, and leaves it in no doubt. The right of appeal granted by the statutes embraces the case of the petitioner.

2. Two objections have been made against the conclusiveness of what is stated above.

*First.* That inasmuch as the third section of the act of 12th March, 1863, states "that any person claiming to have been the owner of any such captured or abandoned property may prefer his claim to the proceeds thereof in the Court of Claims, *and on proof to the satisfaction of said Court* of his ownership of said property, of his right to the proceeds thereof, and that he has never given any aid or comfort to the present rebellion, to receive the residue of such proceeds," &c.

*Second.* It is contended that a finding of fact and law by the Court of Claims, under said section, is not a judgment, and therefore no appeal lies from it.

To support the first objection, it has been contended that the employment of the words in the statute, "on proof to the satisfaction of said Court," necessarily imply that the action of the Court is to be final, and not subject to review by the appellate tribunal.

If this reasoning were correct, then in every case where proof is to be made to the satisfaction of a court no appeal can be had from its judgments; but in every conceivable case where a question depending on facts is submitted to a court, the proof must be to its satisfaction, otherwise it would not give judgment; therefore, according to this reasoning, in no case whatever does an appeal lie from the judgment of a court. This conclusion we know to be a false proposition;

therefore, one of the premises from which it flows must be false. Now, the premises just laid down, "that in every conceivable case where a question depending on facts is submitted to a court, the proof must be to its satisfaction, otherwise it would not give judgment," is a proposition evidently true; therefore the proposition of the other premises must be false, and the other proposition is that there is no appeal from the judgment of the Court of Claims, as that Court is to decide on proof to its satisfaction. Hence the first objection above stated is invalid and of no force.

It has been attempted to sustain this objection by reference to the opinion of Mr. Attorney General Wirt, (see 1 Attorneys Gen'l Opinions, p. 298,) on the proper construction of the 5th section of the act of April 12, 1812, (3 Statutes at Large, pp. 122 and 123,) which section refers to the act of February 5, 1813, (2 Statutes at Large, pp. 797 and 798,) "giving the right of pre-emption in the purchase of lands to certain settlers in the Illinois territory," the second section of which provides that, "where it shall appear *to the satisfaction of* the register and receiver of public moneys of the land office" that an applicant is entitled, he shall have a right to enter the land on producing receipt, &c. Mr. Wirt was asked whether any other agency than that of the register and receiver could ascertain and decide upon the pre-emption, and he (Mr. W.) said not.

This construction was confirmed by the decision of United States Supreme Court, in Lytle *vs.* The State of Arkansas, (9 Howard, p. 333.)

But neither the Attorney General nor the Court rests the opinion on the expression of the statute that the right of the claimant must *appear to the satisfaction of the register and receiver;* the ground of the opinion is, as McLean, J., said, in 9 Howard, "from their decision no appeal was given;" and, as is equally clear, the same absence of all right of appeal would exist had the statute omitted all suggestions of the character or amount of proof to be required by the register and receiver.

The opinion of Mr. Attorney General Butler (3 Opinions, p. 93) is also adduced in support of the objection. This opinion was given on the construction of 3d section of the act of 29th May, 1830, (4 Statutes at Large, p. 421,) and on the act, continuing it in force for a time, of 19th June, 1834. (4 Statutes at Large, p. 678.)

The act of 1830 contains the same expression as to proof as the act of 1813; and the view of the former taken by Mr. Butler was the same as that taken of the latter by Mr. Wirt, and upon the same ground, that no appeal was given by the act, but not because the proof was required to be to the satisfaction of the officer hearing it. Nothing different from this is to be found in the reference made to these statutes, and the adjudged cases quoted above, in the opinion delivered by Catron, J., in Barnard's heirs *vs.* Ashley's heirs, (18 Howard's Reports, pp. 44 to 46.)

Reference is also made in support of the objection to the act of March 3, 1817, (3 Statutes at Large, p. 399,) which gives the President power to release debtors to the United States imprisoned for debt *on proof to his satisfaction* that they are unable to pay, &c.; also to the act of 6th June, 1798, (1 Statutes at Large, p. 361,) authorizing the Secretary of the Treasury to release debtors of a certain class *on proof to his satisfaction, &c.*

All the laws that have been referred to are such as accord the bounty of the Government to classes of persons designated; no one's right of property is involved but that of the sovereign; and when he chose to part with his property, on certain conditions, and orders a certain officer of the executive department to ascertain whether the conditions in each case exist, of course that officer's decision is final, unless the law expressly says the contrary. Such officers, though exercising discretion and judgment, are not judiciary officers; they are not and cannot be clothed with any of the judicial powers of the United States, and in this respect differ entirely from the judges of the Court of Claims.

In addition to the cases above quoted, in which Congress

has dispensed the bounty of the Government through the agency of the officers of the executive department, certain cases have been quoted as sustaining the objection to this appeal, from the decisions of the Supreme Court in questions pertaining to the powers and jurisdiction of the judicial courts of the United States.

The cases relied on are those of—

1. Spratt *vs.* Spratt, 4 Peters, p. 393.
2. Durosseau *vs.* The United States; 6 Cranch, p. 307.

In Spratt *vs.* Spratt the question arose whether the judgment of the circuit court of the United States for the District of Columbia admitting James Spratt to citizenship, which was unexceptionable in form, was conclusive, or whether the United States Supreme Court could look behind it and inquire on what testimony it was pronounced. On this, Marshall, C. J., said: "The various acts upon the subject"—of naturalization—"submit the decision on the right of aliens to admission as citizens to courts of record. They are to receive testimony, to compare it with the law, and to judge on both law and fact. This judgment is entered on record as the judgment of the Court. It seems to us, if it be in legal form, to close all inquiry, and, like every other judgment, to be complete evidence of its own validity." (4 Peters, pp. 407, 408.)

The Chief Justice is far from maintaining the conclusiveness of the Spratt judgment of naturalization because founded on testimony *satisfactory to the lower* court; but because the law-making power had provided no means for reviewing such a judgment. The circuit court of the District of Columbia, which gave judgment admitting Spratt to citizenship, was a court of common law jurisdiction, governed by the rules and forms of that system. Its judgments could only be reviewed by writ of error, and Congress had provided no writ of error for such judgments; and even had a writ of error been possible in the case of Spratt's judgment of naturalization, no examination of it could have been made by

the Supreme Court as it was then presented to them, since the facts and the law had both been passed upon by the lower court; and "the writ of error, by which alone a case can be removed from a circuit court when sitting as a court of law, brings up for revision nothing but questions of law: and if the case has been tried without the intervention of a jury, the decisions of the circuit court upon questions of fact are as conclusive as if they had been found by a jury." (See The United States *vs.* King, 7 Howard, p. 844.) This is the reason, in law, why the judgment of the circuit court naturalizing Spratt could not be reviewed in the Supreme Court; and the reason was not because the circuit court was required by law to admit aliens to citizenship on *satisfactory proofs*.

The other case relied on—that of Durosseau *vs.* The United States, in 6 Cranch, p. 307—was an action commenced by the United States against the obligors on a bond given under the embargo law of 22d December, 1807. (2 Statutes at Large, p. 451.) The defendants, obligors in the bond, set up a special defence, to which the United States demurred; the court below rendered judgment for the United States, whereupon the defendants sued out this writ of error.

The action was commenced in the district court of the United States for the district of Orleans, which had, by law, the same jurisdiction as the United States district court in Kentucky. (See act of 26th March, 1804, sec. 8, 2 Statutes at Large, pp. 285 and 286.)

The attorney general, Rodney, contended that the Supreme Court had no jurisdiction, because there could be no writ of error to or appeal from the decisions of the *district* court of Orleans in any case; or if in any case, not in such a case as was presented.

Marshall, C. J., delivering the opinion of the Court, decided that the writ of error was properly sued out, and that the United States Supreme Court had jurisdiction, (p. 314,) in the course of which he said: "The Court implies a legislative exception from its constitutional appellate power in

the legislative affirmative description of these powers." (See p. 314.)

Now, it cannot be seen how this principle militates against the right of petitioner to an appeal in the case we are considering, for the act of Congress of March 3, 1863, sec. 5, (12 Statutes at Large, p. 766,) gives the right of appeal to this Court to both parties in any suit in the Court of Claims where more than three thousand dollars are involved, so that there is no question of a denial of jurisdiction in this Court by implication from its being conferred in other cases; but it is here a direct affirmative declaration of appellate jurisdiction.

It has been considered, in argument, that the views of its own appellate powers, taken by this Court in the Durousseau case, just quoted, are applicable to an appeal allowed by the sixth section of the act of May 15, 1820. (See 3 Statutes at Large, pp. 595 and 596.) That act, "providing for the better organization of the Treasury Department," provided, in its second section, (p. 592,) that in certain cases an officer of the department might, without judgment previously obtained, issue a warrant of distress against the property of a defaulting officer; the fourth section (p. 595) provided that any person considering himself aggrieved by the warrant of distress might prefer a bill of complaint to any district judge of the United States, and obtain an injunction against to stay proceedings on such warrant altogether; "and if, upon dissolving the injunction, it shall appear to the satisfaction of the judge who shall decide upon the same that the application for injunction was merely for delay, in addition to the lawful interest which shall be assessed on all sums which may be found due against the complainant, *the said judge is hereby authorized to add such damages* as that, with the lawful interest, it shall not exceed the rate of ten per centum per annum on the principal sum."

The sixth section provides "that if any person shall consider himself aggrieved *by the decision* of such judge, either in refusing to issue the injunction, *or*, if granted, *on its dis-*

*solution*, it shall be competent for such person to lay a copy of such proceedings had before the district judge before a judge of the Supreme Court, *to whom authority is hereby given* either to grant the injunction *or to permit an appeal*," &c. (Pp. 595 and 596.)

It is urged that by applying to these provisions the dictum quoted from the opinion of Marshall, C. J., in Durosseau *vs.* U. S , there could be no appeal from the portion of the judgment which allowed the judge of the district court to assess damages in dissolving injunctions taken merely for delay.

It is respectfully submitted that this interpretation of the meaning of the statute is erroneous. No case can be quoted, as far as is known, in support of such a view. The damages the district judge is authorized to award form a part of his judgment or decision, and from the *decision* the next section of the act authorizes an appeal. No exception is made. The appeal is allowed from the whole decision, and not from a part of it.

The second objection which has been opposed to the right of appeal claimed is, that the finding and conclusion of the Court in cases under the act of 12th March, 1863, (12 Statutes at Large, 820,) is not a judgment, and therefore cannot be appealed from.

This assertion assumes that the judges of the Court of Claims in such cases are merely commissioners, and not a judiciary tribunal. The correctness of this assumption it is not difficult to test.

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This assertion assumes that the judges of the Court of Claims in such cases are merely commissioners, and not a judiciary tribunal. The correctness of this assumption it is not difficult to test.

The proceedings are not *ex parte*. There is a regular suit; an issue of law or fact, or both, is made between two parties, the petitioner and the United States. On this issue the Court hears testimony and argument; the Attorney General appears on behalf of the United States*; the Court of Claims gives judgment precisely as in all other cases; and in concluding, "order, adjudge and decree that the claimant do have and recover from the United States the sum of," &c., (see Henry Grossmeyer *vs.* The United States, 4 Nott &

* or Special Counsel as ordered by the joint resolution of 3 d. March 1868. Statutes p. 251.